



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

June 12, 2012

Sent via United Parcel Service

Randall P. Smith  
Vice President and General Manager  
Formosa Plastics Corporation, Texas  
201 Formosa Drive  
Point Comfort, TX 77978

Re: Formosa Plastics Corporation, Texas RCRA 3008(a) Consent Agreement and Final Order  
(Docket No. RCRA-06-2012-0938) and Amendment No. 2 to RCRA 3008(h)  
Administrative Order on Consent (Docket No. VI-001(h)-90-H)

Dear Mr. Smith:

Enclosed is signed copy of a RCRA 3008(a) Consent Agreement and Final Order  
(Docket No. RCRA-06-2012-0938) and an Amendment No. 2 to RCRA 3008(h) Administrative  
Order on Consent (Docket No. VI-001(h)-90-H) to obtain site-wide RCRA corrective actions  
at the Formosa Plastics Corporation, Texas (Formosa). The U.S. Environmental Protection  
Agency, Region 6, appreciates your cooperation throughout this process.

Sincerely,

A handwritten signature in black ink, appearing to read "John Blevins", written over the printed name and title.

John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

cc: Mr. Robert T. Stewart  
Counsel for Formosa Plastics Corporation, Texas  
Kelly, Hart & Hallman LLP  
301 Congress Avenue, Suite 2000  
Austin, TX 78701  
Sent via United Parcel Service



3. The Respondent neither admits nor denies the factual allegations or any issue of law contained in this CAFO.
4. The Respondent expressly waives its right to request a hearing on any issue of law or fact set forth in this CAFO and Respondent waives all defenses which have been raised or which could have been raised.
5. The Respondent consents to the issuance of this CAFO.
6. All terms and words used in this CAFO shall be given their plain meaning and where applicable, the terms and words used shall be given their legal meaning.

## II.

### JURISDICTION

7. This CAFO is issued by the EPA, Region 6 pursuant to Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a), as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA") and is simultaneously commenced and concluded through the issuance of the CAFO under 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3).
8. The requirements of RCRA Subtitle C include the requirements of the authorized program in a State which has been authorized to carry out a hazardous waste program under Section 3006 of RCRA, 42 U.S.C. § 6926. On December 26, 1984 (49 Fed. Reg. 48300), the State of Texas received final authorization for its base RCRA program, and there have been subsequent authorized revisions to the base program. With the addition of Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), certain requirements imposed pursuant to the authority of HSWA became immediately applicable in the authorized States upon the federal effective date. The Texas Commission on Environmental Quality,

("TCEQ"), formerly known as the Texas Natural Resource Conservation Commission, is the designated State agency responsible for carrying out this RCRA program.

9. The authority to issue such CAFO has been delegated to the Regional Administrator, EPA Region 6. The authority has been further delegated to the Complainant in this action, the Director, Compliance Assurance and Enforcement Division, EPA Region 6, in the States of Arkansas, Louisiana, Oklahoma, New Mexico, and Texas.

### III.

#### NOTICE TO THE STATE

10. Notice of this action has been given to the State of Texas prior to the issuance of this CAFO pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

### IV.

#### PARTIES BOUND

11. This CAFO shall apply to and be binding upon EPA, and on Respondent and Respondent's agents, successors, assigns, trustees, and receivers, as well as upon subsequent purchasers of the Facility. Any change in the ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this CAFO.
12. Respondent shall provide a copy of this CAFO to any subsequent owners or successors before a controlling interest in ownership rights, stock, assets or the Facility is transferred. Respondent shall be responsible for and liable for completing all of the activities required pursuant to this CAFO, regardless of whether there has been a transfer of ownership or control of the Facility or whether said activities are to be performed by employees, agents, contractors, subcontractors, laboratories, or consultants of

Respondent. Respondent shall ensure that its contractors, subcontractors, laboratories, and consultants comply with this CAFO.

13. No later than 60 days subsequent to any voluntary transfer by Respondent of any interest in the Facility or the operation of the Facility that includes a unit undergoing investigation, closure, or corrective action under the terms of this CAFO, Respondent shall notify EPA of the transfer. In the case of a voluntary or involuntary transfer through a bankruptcy, Respondent shall notify EPA of the bankruptcy proceedings. No later than 20 days after any transfer of a portion of the Facility affected by this CAFO, and if specifically requested by EPA by written notice to Respondent, Respondent shall submit copies of the relevant transfer documents to EPA.

V.

STATEMENT OF PURPOSE

14. The objective of EPA in issuing this CAFO is to establish an enforceable legal mechanism for an area of Respondent's Facility that is identified by the EPA and Formosa (the "Parties") as the "Expansion Area" as set forth in Figure 1 attached hereto and incorporated herein. Further, the objective is to achieve RCRA corrective action objectives at the Expansion Area.
15. The purpose of this CAFO is for Respondent to initiate or continue the performance of appropriate and similar investigations and remedies required of Formosa by the 1991 RCRA Order on Consent Docket # VI-011(h)-90-H (the "1991 Order") at the Expansion Area until Respondent timely applies for and receives a Post Closure Permit or a Post Closure Order for the Facility from the TCEQ.

VI.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

16. Respondent is a corporation incorporated under the laws of the State of Delaware and has been doing business in the State of Texas from on or about October 20, 1980.
17. Respondent is located at 201 Formosa Drive, Point Comfort, Texas 77978.
18. Respondent's Registered Agent for Service is Corporation Service Company, d/b/a CSC-Lawyers Inc. Service Co., 211 E. 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701.
19. Respondent operates a plastic manufacturing operation at 201 Formosa Drive, Point Comfort, Texas 77978.
20. The Respondent is a "person" as the term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 30 Texas Administrative Code ("TEX.ADMIN.CODE") § 335.1 [40 C.F.R. § 260.10].
21. At all relevant times, Respondent was and continues to be the "owner" and/or "operator" of the plastic manufacturing operation, as those terms are respectively defined in 30 TEX.ADMIN.CODE § 335.1 [40 C.F.R. § 260.10].
22. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent notified EPA of its hazardous waste activity. In its notification dated November 15, 1980, Respondent identified itself as a generator of hazardous waste.
23. Respondent is a generator of "solid waste" as that term is defined at 30 TEX.ADMIN.CODE § 335.1 [40 C.F.R. § 261.2].
24. Respondent is a generator of "hazardous waste" as that term is defined at 30 TEX.ADMIN.CODE § 335.1 [40 C.F.R. § 261.3].
25. Respondent operates a "facility" as that term is defined at 30 TEX.ADMIN.CODE § 335.1 [40 C.F.R. § 260.10].

26. Certain wastes and constituents found at the Facility are hazardous wastes and/or hazardous constituents pursuant to Sections 1004(5) and 3001 of RCRA; 42 U.S.C. §§ 6903(5) and 6921; and 40 C.F.R. Part 261.
27. There is or has been a release of hazardous waste or hazardous constituents into the environment from the Facility.
28. As listed below, Respondent has disposed of hazardous waste into the environment without a permit in violation of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), 30 TEX.ADMIN.CODE § 335.43 [ 40 C.F.R. § 270.1 and 270.10]:
- a. In late 1993, Respondent reported an accidental discharge of ethylene dichloride ("EDC") from an aboveground storage tank into the secondary containment around the tank and into the soils beneath the secondary containment; this release occurred in the EDC Plant located within the Expansion Area; Respondent found EDC present in the soil. Respondent excavated soil and utilized a portable thermal desorption unit to recover EDC from the soil. Respondent determined that shallow groundwater at 15 feet below ground surface was contaminated with EDC. Respondent installed groundwater recovery wells and initiated recovery on January 2, 1996; this work has been documented in reports referring to the DT-401/DT-402 Tanks at the EDC plant, which were submitted to TCEQ;
  - b. In late 1996, Respondent reported an accidental discharge of pyrolyzation gasoline during a materials transfer process in the Olefins OSBL tank farm area located within the Olefins I Plant in the Expansion Area. Benzene and toluene are constituents of pyrolyzation gasoline. On July 28, 1998, Respondent conducted soil vapor gas analyses and collected soil samples in the soils underlying the concrete pads in the Olefins OSBL tank farm area. Benzene was found in soil samples at concentrations of 5.6 mg/Kg and 0.025 mg/Kg. Respondent completed a Remedial Investigation report on April 6, 2001 that showed localized soil contamination by benzene, ethyl benzene, toluene and xylenes (BTEX), and groundwater contamination by benzene and toluene. Respondent completed a baseline risk assessment on April 6, 2001 that concluded that a concrete pad be placed over the area and no further action was necessary; and
  - c. On December 4, 1998, an explosion in the EDC Plant in the Expansion Area destroyed two aboveground tanks that stored EDC and damaged the groundwater monitoring wells in the area. As a result of the activities associated with controlling the effects of the explosion, fire fighting run-off waters containing EDC overflowed into the Culverts Nos. 6 and 7, which then drained to Outfall 006 and ultimately to Cox Creek. In September 1999, Respondent issued a certified report that detailed the remediation efforts to

remove contaminated soil from Outfall 006. In December 1999, Respondent described in a certified report the remediation efforts to remove contaminated soil from Culverts Nos. 6 and 7. As a result of the explosion, the recovery wells associated with the groundwater remediation system were damaged and the system was temporarily inoperable.

## VII.

### COMPLIANCE ORDER

29. Within two hundred (200) days after the effective date of this CAFO, Respondent shall submit a post-closure application to TCEQ for an order or permit that extends to the current boundaries of the Expansion Area and the pre-1990 Area (currently subject to the 1991 Order) as shown in Figure 1. Within fifteen (15) days after Respondent submits such post-closure application to TCEQ, Respondent shall notify EPA in writing that Respondent has submitted such application to TCEQ.
30. Within seventy (70) days after the effective date of this CAFO, Respondent shall participate in an initial scoping meeting at the facility with EPA and TCEQ. During the scoping meeting, Formosa shall document the status of each Solid Waste Management Unit ("SWMU") and Area of Concern identified in Exhibit 1 to this CAFO. Further, Formosa shall evaluate the need to perform corrective action activities on each SWMU and Area of Concern listed in Exhibit 1.
31. Within forty-five (45) days after the Initial Scoping Meeting, Respondent shall submit to EPA and TCEQ a summary of the Initial Scoping Meeting. The Summary shall include a SWMUs and Areas of Concern table that lists the status of each unit and area, the determination regarding further investigation, and the proposed activities to be conducted under this CAFO.
32. Within sixty (60) days after EPA's approval of the summary submitted pursuant to Paragraph 31 above, Respondent shall submit a Region 6 Corrective Action Strategy



("CAS")<sup>1</sup> work plan to EPA and TCEQ. The CAS work plan will identify data gaps in the existing conceptual site model and focus further investigation on meeting the site-wide corrective action objectives and the Texas Risk Reduction Program requirements.

33. Within thirty (30) days after EPA's comments are received on the CAS work plan, Respondent shall revise and resubmit the CAS work plan to the EPA and TCEQ.
34. Within one hundred and sixty (160) days<sup>2</sup> after completion of the work in the approved CAS work plan, Respondent shall submit the draft updated Risk Management Plan ("RMP")<sup>3</sup> to the EPA and TCEQ.
35. Within thirty (30) days after EPA's comments are received on the draft updated RMP, Respondent shall submit the final RMP to EPA and TCEQ.
36. Within thirty (30) days after receipt of EPA's approval of the RMP, Respondent shall submit to EPA and TCEQ an updated Community Relations Plan ("CRP") and an updated Site Management Plan ("SMP").
37. Within fifteen (15) days after EPA's comments are received on the updated CRP and SMP, Respondent shall submit to EPA and TCEQ a final CRP and SMP.

#### VIII.

##### STIPULATED PENALTIES

38. In addition to any other remedies or sanctions available to EPA, if the Respondent fails or refuses to comply with any provision of this CAFO, the Respondent shall pay stipulated

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<sup>1</sup> EPA Region 6 Corrective Action Strategy guideline, November 2008.  
[http://www.epa.gov/region6/6pd/rcra\\_c/pd-o/riskman.htm](http://www.epa.gov/region6/6pd/rcra_c/pd-o/riskman.htm)

<sup>2</sup> The Parties agree that future events and/or work may justify a schedule change.

<sup>3</sup> Relevant new data from all corrective action activities at the site, available at the time of revision, will be included.

penalties in the following amounts for each day during which each failure or refusal to comply continues:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$ 1,000.00
16th through 30th day	\$ 1,500.00
31st day and beyond	\$ 2,500.00

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

39. The payment of stipulated penalties shall be made by mailing a cashier's check or certified check payable to the Treasurer of the United States, within thirty (30) days of receipt of a demand letter for payment to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

The case name and docket number (In the Matter of Formosa Plastics Corporation, Texas, Docket No. RCRA 06-2012-0938) shall be clearly typed on the check to ensure proper credit. The Respondent shall send simultaneous notices of such payments, including copies of the money order, cashier's check or certified check to the following:

Lorena S. Vaughn  
Regional Hearing Clerk (6RC-D)  
U.S. EPA - Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Associate Director, Hazardous Waste Enforcement Branch (6EN-H)  
Compliance Assurance and Enforcement Division  
U.S. EPA - Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Chief, RCRA Legal Branch (6RC-ER)  
Office of Regional Counsel  
U.S. EPA - Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Adherence to these procedures will ensure proper credit when payments are received.

In addition, the provisions of Section VIII concerning interest, penalties, and administrative costs also apply.

40. In addition to the stipulated penalties set forth above, EPA specifically reserves the right to seek other remedies or sanctions available to the EPA by reason of the Respondent's failure to comply with the requirements of this CAFO, including sanctions that EPA may seek under Section 3008 of RCRA, 42 U.S.C. § 6928.

41. If the Respondent disputes the basis for imposition of stipulated penalties, the issue shall be resolved under the Dispute Resolution procedures of this CAFO. All stipulated penalties shall continue to accrue through the period that dispute resolution is ongoing. Invoking dispute resolution shall not stay the accrual of stipulated penalties; however, the obligation to pay shall be stayed pending resolution of the dispute.

#### IX.

#### FORCE MAJEURE

42. Respondent shall perform all requirements under this CAFO within the time limits established under this CAFO, unless the performance is delayed by a force majeure. For purposes of this CAFO, a force majeure is defined as any event arising from causes not reasonably foreseeable and/or beyond the control of the Respondent, which could not be overcome or mitigated by due diligence and which delays or prevents performance by a date required by this CAFO. Force majeure does not include financial inability to complete the work required under this CAFO or any changes in Respondent's business

or economic circumstances.

43. If any force majeure occurs or has occurred that may delay the performance of any obligation under this CAFO, the Respondent shall notify EPA orally or by facsimile or electronic transmission as soon as possible as provided in Section XI (Notification) of this CAFO, but not later than seventy-two hours after the time when Formosa first knew or should have known that the event might cause a delay. Respondent shall undertake best efforts to avoid and minimize the delay. Failure to comply with this notice provision shall waive any claim of force majeure by the Respondent.
44. Within ten (10) days after the notice to EPA, Formosa shall provide written notice to EPA and TCEQ with an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Formosa's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Formosa, such event may cause or contribute to an endangerment to public health, welfare or the environment. Formosa shall include with any notice all available documentation supporting a claim that the delay was attributable to a force majeure event. Failure to comply with the above requirements regarding an event shall preclude Formosa from asserting any claim of force majeure.
45. If EPA determines that a delay in performance or anticipated delay of a requirement to perform under this CAFO is or was attributable to a force majeure, then the time period for performance of that requirement will be extended. If EPA determines that the delay or anticipated delay has been or will be caused by a force majeure, then EPA will notify

Respondent, in writing, of the length of the extension, if any, for performance of such obligations affected by the force majeure. Any such extensions shall not alter Respondent's obligation to perform other tasks required by the CAFO which are not affected by the force majeure.

46. If EPA disagrees with Respondent's assertion of a force majeure, then the Respondent may elect to invoke the dispute resolution provision, and shall follow the procedures set forth in the Dispute Resolution Section. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this Section. If Respondent satisfies this burden, then the time for performance of such obligation will be extended by EPA for such time as is necessary to complete such obligation.

X.

DISPUTE RESOLUTION

47. If the Respondent objects to any decision or directive of EPA concerning this CAFO, the Respondent shall notify the following persons in writing of its objections, and the basis for those objections (the Respondent may use the RCRA Civil Penalty Policy as a basis for adjusting the demanded stipulated penalties), within fifteen (15) days of Respondent's receipt of a mailed copy of EPA's written decision or directive:

Associate Director, Hazardous Waste Enforcement Branch (6EN-H)  
Compliance Assurance and Enforcement Division  
U.S. EPA - Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Chief, RCRA Legal Branch (6RC-ER)  
Office of Regional Counsel  
U.S. EPA - Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

48. The Hazardous Waste Enforcement Branch Associate Director or his/her designee and the Respondent shall then have an additional fifteen (15) days from EPA's receipt of the Respondent's written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondent, the agreement shall be reduced to writing and signed by the Associate Director and the Respondent and incorporated by reference into this CAFO.
49. If no agreement is reached between the Associate Director and the Respondent within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division ("Division Director") or his/her designee. The Division Director and the Respondent shall then have a second 15-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondent, the resolution shall be reduced to writing and signed by the Division Director and Respondent and incorporated by reference into this CAFO. If the Division Director and the Respondent are unable to reach agreement within this second 15-day period, the Division Director shall provide a written statement of EPA's decision to the Respondent, which shall be binding upon the Respondent and incorporated by reference into this CAFO.

50. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section XIII, Modification, below.

XI.

NOTIFICATION

51. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other party that another individual has been designated to receive the communication.

For EPA:

US Environmental Protection Agency  
1445 Ross Avenue, Suite 1200 (6PD-O)  
Dallas, TX 75202-2733  
Attention: Ms. Nancy Fagan

For Respondent:

Vice President and General Manager  
Formosa Plastics Corporation, Texas  
201 Formosa Drive  
Point Comfort, TX 77978  
Attention: Randall P. Smith

52. Unless specifically stated otherwise in this CAFO, Respondent's actions (including the submittals of documents and reports to EPA) are timely when they are performed by Respondent on or before the due date. Respondent's documents and reports to EPA are

deemed timely when they are mailed on or before the due date. The Parties agree to provide written communications associated with the approvals or submittals of final deliverables via the United States mail (Certified, Return Receipt Requested) or by other mail delivery service, where the dates of mailing and delivery can be verified. Further the Parties agree that for communications in general, including Respondent's submittals for EPA's comments and EPA's transmittal of comments to Respondent, the Parties may use the United States mail, other mail delivery services, or e-mail. For all deadlines imposed on Respondent under Section VII of this CAFO, the time period for Respondent's performance shall begin to run on the date that Respondent receives EPA's correspondence in the United States mail or other mail delivery service. In computing a period of days, the first day is excluded and the last day is included.

## XII.

### PROJECT COORDINATOR

53. The Parties designate the following persons as Project Coordinators:

For EPA:

Ms. Nancy Fagan  
US Environmental Protection Agency  
1445 Ross Avenue, Suite 1200 (6PD-O)  
Dallas, TX 75202-2733

For Respondent:

Mr. Matt Brogger  
Formosa Plastics Corporation, Texas  
201 Formosa Drive  
Point Comfort, TX 77978

54. Each Project Coordinator shall be responsible for overseeing the implementation of this CAFO and for designating a person to act in his/her absence. The EPA Project Coordinator will be EPA's designated representative for the Facility. To the maximum



extent practicable, all communications between Respondent and EPA, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to this CAFO shall be directed through the Project Coordinators.

Notwithstanding any other provision of this CAFO, either the Project Coordinator for Respondent or the Vice President and General Manager of Respondent may submit communications concerning this CAFO to EPA, including without limitation, documents, reports and other correspondence.

55. The Respondent may change its Project Coordinator(s) at any time, but shall provide EPA with written notice of such change within ten (10) days after the change becomes effective. The absence of a Project Coordinator from the Facility shall not be cause for the stoppage of work.

### XIII.

#### MODIFICATION

56. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both parties. Any such amendments shall be in writing, shall be first signed by the Respondent, then signed by the Division Director, and shall be effective and incorporated into this CAFO on the date that such amendments are filed with the Regional Hearing Clerk.
57. Any reports, plans, specifications, schedules, and attachments required by this CAFO are, upon written approval by EPA, incorporated into this CAFO.

### XIV.

#### RETENTION OF ENFORCEMENT RIGHTS

58. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.

59. Except as specifically provided in this CAFO, nothing herein shall limit the statutory and regulatory power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

XV.

INDEMNIFICATION OF EPA

60. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondent, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondent in carrying out the activities required by this CAFO.

XVI.

FINANCIAL ASSURANCE

61. Within thirty (30) days after Respondent submits the final RMP in accordance with Section VII. Paragraph 35 of this CAFO, Respondent shall provide to the EPA adequate information addressing how it will comply with the applicable financial assurance requirements for closure, post-closure, and corrective action at the Facility in accordance with the TCEQ's financial assurance rules at 30 TEX.ADMIN.CODE Chapter 37.

XVII.

RECORD PRESERVATION

62. The Respondent shall preserve, during the pendency of this CAFO, all records and documents in its possession or in the possession of its divisions, employees, agents, contractors, or successors which in any way relate to this CAFO regardless of any document retention policy to the contrary.

XVIII.

COSTS

63. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 04-121), and any regulations promulgated pursuant to those Acts.

XIX.

TERMINATION AND SATISFACTION

64. The provisions of this CAFO shall terminate when any one of the following two conditions has been satisfied and the EPA upon request of Respondent provides written confirmation of such termination:
- a. Upon the issuance by the TCEQ of a post-closure permit or post closure order for the Facility; or
  - b. The Respondent has demonstrated that all of the terms of this CAFO have been completed to the satisfaction of EPA.
65. Upon demonstration by the Respondent that any one of the two foregoing conditions has been satisfied, said written notice shall not be unreasonably withheld or delayed.

XX.

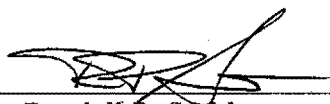
EFFECTIVE DATE

66. This CAFO, and any subsequent modifications, will become effective upon filing with the Regional Hearing Clerk.

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT  
AGREEMENT AND FINAL ORDER:**

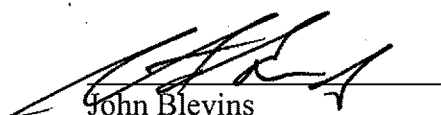
FOR THE RESPONDENT:

Date: 6/11/12

  
Mr. Randall P. Smith  
Vice President and General  
Manager  
Formosa Plastics Corporation, Texas

FOR THE COMPLAINANT:

Date: 6-12-12

  
John Blevins  
Director  
Compliance Assurance and  
Enforcement Division  
U.S. EPA, Region 6

### FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 CFR Part 22, the foregoing Consent Agreement is hereby ratified.

This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

This Final Order shall resolve only those causes of action alleged herein. Nothing in this

Final Order shall be construed to waive, extinguish or otherwise affect Respondent's

(or its officers, agents, servants, employees, successors, or assigns) obligation to comply with

all applicable federal, state, and local statutes and regulations, including the regulations that

were the subject of this action. The Respondent is ordered to comply with the terms of

settlement and the stipulated penalty payment instructions as set forth in the Consent

Agreement. Pursuant to 40 CFR § 22.31(b), this Final Order shall become effective upon

filing with the Regional Hearing Clerk.

Date: \_\_\_\_\_

\_\_\_\_\_  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_ day of June 2012, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by the method identified below:

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Corporation Service Company  
d/b/a CSC-Lawyers Inc. Service Co.  
Registered Agent for Service for  
Formosa Plastics Corporation  
211 E. 7<sup>th</sup> Street, Suite 620  
Austin, TX 78701

Mr. Randall P. Smith  
Vice President and General Manager  
Formosa Plastic Corporation, Texas  
201 Formosa Drive  
Point Comfort, TX 77978

**Copies to:**

Mr. Robert Stewart  
Kelly, Hart & Hallman LLP  
301 Congress Avenue, Suite 2000  
Austin, TX 78701

\_\_\_\_\_  
Ms. Lori Jackson  
Paralegal

## **FIGURE 1**

### **Formosa Plastics Corporation, Texas Facility Boundaries**



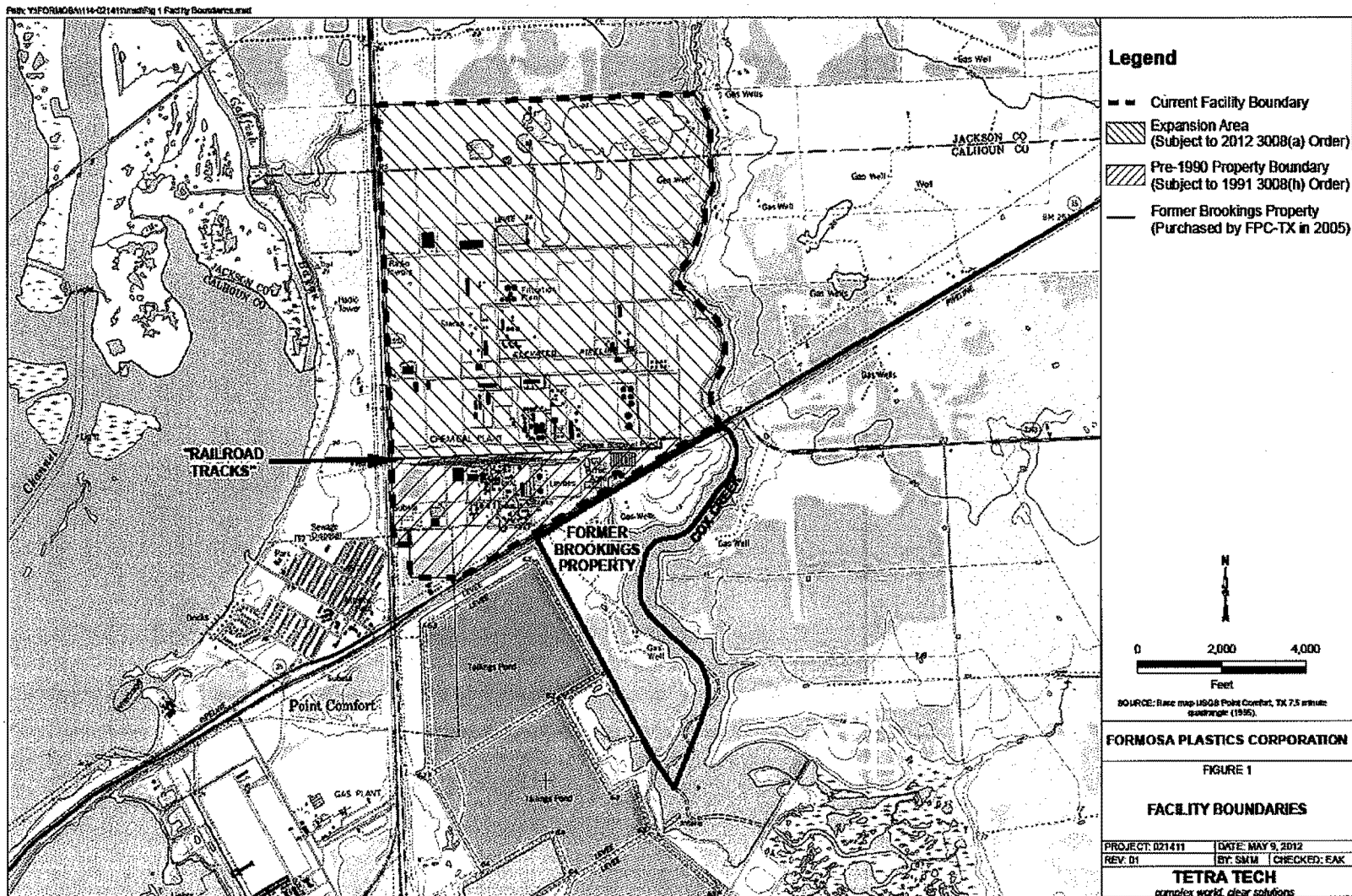


Figure 1

Docket No. RCRA-06-2012-0938

# **EXHIBIT 1**

**Formosa Plastics Corporation, Texas**

**Solid Waste Management Units and Areas of Concern**

Docket No. RCRA-06-2012-0938

EPA-R6-2017-008965\_0000491

**EXHIBIT 1**  
**Formosa Plastics Corporation, Point Comfort, TX**

**SOLID WASTE MANAGEMENT UNITS**

1. Hazardous Waste Storage Tank DT405 – Tank: listed on TCEQ NOR as Unit 023<sup>1</sup>
2. Hazardous Waste Storage Tank DT 407A: listed on TCEQ NOR as Unit 024
3. Hazardous Waste Storage Tank DT 407B: listed on TCEQ NOR as Unit 025
4. Brine Filter Press Roll-off Box Container Storage Area: listed on TCEQ NOR as Unit 026
5. Storage Pad by EDC Unit: listed on TCEQ NOR as Unit 031
6. EDC Process Unit within ISBL System Container Storage Area: listed on TCEQ NOR as Unit 035
7. HDPE II Process Area within the ISBL System Container Storage Area, also known as HDPE Sump: listed on TCEQ NOR as Unit 039
8. Expansion Technical, Less than 90-day Drum Storage Area: listed on TCEQ NOR as Unit 042
9. Raw Water Pond Receiving Blow-down from Demineralization Unit, Surface Impoundment: listed on TCEQ NOR as Unit 043
10. Chlor-Alkali – IEM Unit within the ISBL System Container Storage Area: listed on TCEQ NOR as Unit 045 and inactive since August 24, 2009
11. SPVC Technical, Less than 90-Day Drum Storage Area: listed on TCEQ NOR as Unit 050
12. Olefins Plant Area: Zimpro OL-1 and OL-2 Wet Air Oxidation Units (wastewater treatment under the TPDES permit)
13. Satellite Accumulation Storage Areas
  - a. Laboratory Wastes – Satellite Accumulation Areas
  - b. Spray Painting Wastes– Satellite Accumulation Areas
  - c. Sand Blast Wastes– Satellite Accumulation Areas

**AREAS OF CONCERN**

1. Storm Water Outfalls 6, 7, 8, and 9
2. Soil Debris Piles Northeast of New SPVC Facility
3. LLDPE Plant: Tank DO 615 - Water Separation Unit from Die Cut Process
4. LLDPE Plant: Heavy Ends Tank Receiving Waste from the Solvent Recovery Unit
5. HDPE Plant I: Waste Hexane Drum and Waste Hexane Stripper HDPE Plant II: Tank T801 - Centrifugal Dryer Filtrate Unit
6. Central Maintenance Shop and Maintenance Waste: Wash Down Pad, Oil Water Separator, and Used Oil Storage Vessel
7. Waste Management Units listed on TCEQ NOR and located in the Combined Wastewater Treatment Plant: listed on TCEQ NOR as Units 27, 36, 37, 40, and 49<sup>2</sup>

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<sup>1</sup>“TCEQ NOR” refers to Respondent’s Industrial and Hazardous Waste Notice of Registration No. 31945 at the Texas Commission on Environmental Quality dated June 15, 2010.

<sup>2</sup>For this Order, these solid waste management units are listed as areas of concern.

## Amendment No. 2

### INTRODUCTION

In accordance with Section IX.J.2 of this Order, EPA and Respondent have agreed to the modifications of the Order as set forth herein. The provisions set forth below are intended to execute the relevant determinations made by the EPA on April 24, 2009<sup>1</sup> pursuant to Section IX.A.5. (on Page 14 of the Order), to modify Section IX.N. (on Page 29 of the Order), and to replace Section V. of the Corrective Action Plan, entitled "Scope of Work for the Corrective Measures Implementation (CMI) at Formosa Plastics Corporation [, Texas]" (on Pages 69-85 of Exhibit 1 to the Order).

### ORDER

#### IX. WORK TO BE PERFORMED

##### A. CORRECTIVE ACTIONS

Respondent shall undertake, continue to take, and complete each of the following actions to the satisfaction of EPA and in accordance with the terms, procedures and schedules which are set forth in Exhibit I – Corrective Action Plan ("CAP"), Section V Corrective Measure Implementation ("CMI"). The CAP is hereby incorporated into this Order by reference as if reproduced in full herein.

##### N. TERMINATION AND SATISFACTION

The provisions of this Order, as amended, shall terminate when any one of the following two conditions has been satisfied and the EPA upon request of Respondent provides written confirmation of such termination:

1. Upon the issuance by the Texas Commission on Environmental Quality ("TCEQ") of a post-closure permit or post-closure order for the facility; or
2. The Respondent has demonstrated that all of the terms of this Order, including any additional work which EPA may determine to be necessary pursuant to Section IX.A.6 of this Order, and any interim remedial measures which EPA may select have been completed to the satisfaction of EPA, but not including the record preservation provision of paragraph IX.E., or other such continuing requirements.

Upon demonstration by the Respondent that any one of the two foregoing conditions has been satisfied, said written notice shall not be unreasonably withheld or delayed.

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<sup>1</sup> Attached hereto is the EPA letter of April 24, 2009.

## **EXHIBIT 1 – CORRECTIVE ACTION PLAN**

### **V. CORRECTIVE MEASURE IMPLEMENTATION (CMI)**

#### **SCOPE OF WORK FOR THE CORRECTIVE MEASURE IMPLEMENTATION (CMI)** **AT FORMOSA PLASTICS CORPORATION**

##### **PURPOSE**

The purpose of this Corrective Measure Implementation (CMI) program is to design, construct, operate, maintain and monitor the performance of the corrective measure or measures selected to protect human health and the environment. Respondent will furnish all personnel, materials and services necessary for the implementation of the corrective measure or measures. Respondent further acknowledges that corrective action activities may extend onto the former Brookings property located to the south of Highway 35 under the terms of the 1991 RCRA Order on Consent (Docket No. VI-001(h)-90-H).

##### **SCOPE**

The Corrective Measure Implementation program consists of four tasks:

##### **Task XI: Corrective Measure Implementation Program Plans**

- A. Corrective Measures Program Outline
- B. Community Relations Plan
- C. Site Management Plan
- D. Areas of Concern ("AOC") Characterization Work Plan
- E. Treatability Study(Bench-scale and Pilot-scale)
- F. Performance Monitoring Plan

##### **Task XII: Corrective Measures Implementation**

- A. Conduct Performance Monitoring
- B. Evaluate Groundwater Modeling and Prepare Trend Analyses, as appropriate
- C. Evaluate Treatability Study
- D. Submit Final CMI Report

##### **Task XIII: Corrective Measures Performance Review**

- A. Effectively Attain and Maintain Corrective Action Objectives ("CAOs")
- B. Contingency Plans and Actions

**Task XIV: Reporting**

- A. Progress Reports
- B. Groundwater Sampling and Analysis Plan ("GWSAP") Reports
- C. Draft Reports
- D. Final Reports

**Submission Summary**

Respondent's actions (including the submittals of documents and reports to EPA) are timely when they are performed by Respondent on or before the due date. Respondent's documents and reports to EPA are deemed timely when they are mailed on or before the due date. The Parties agree to provide written communications associated with the approvals or submittals of final deliverables via the United States mail (Certified, Return Receipt Requested) or by other mail delivery services, where the dates of mailing and delivery can be verified. Further the Parties agree that for communications in general, including Respondent's submittals for EPA's comments and EPA's transmittal of comments to Respondent, the Parties may use the United States mail, other mail delivery services, or e-mail. For all deadlines imposed on Respondent under this amendment, the time period for Respondent's performance shall begin to run on the date that Respondent receives EPA's correspondence in the United States mail or other mail delivery service. In computing a period of days, the first day is excluded and the last day is included.

A summary of the information reporting requirements contained in the CMI Scope of Work is presented below:

<u>Facility Submission</u>	<u>I</u>	<u>Due Date</u>
<b>TASK XI: Corrective Measures Implementation Program</b>		
Proposed Updated CMI Program Outline and Schedule	I	"Substantive Content Approved May 7, 2012"
Final Community Relations Plan	I	Approved November 15, 2011
Final Site Management Plan <sup>2</sup>	I	Approved April 20, 2012
Final AOC Characterization Work Plan	I	Submitted May 4, 2012
AOC Characterization Report	I	150 days after EPA's approval of the Final AOC Characterization Work Plan

<sup>2</sup> The Site Management Plan will be revised to incorporate differing site conditions that are identified in the AOC Characterization Report, as required by the EPA.

Supplemental AOC Characterization Work Plan	I 60 days after submittal of the AOC Characterization Report if additional work is required
-Supplemental AOC Characterization Report	I 90 days after EPA's approval of the Supplemental AOC Characterization Work Plan <sup>3</sup>
Draft Performance Monitoring Plan for Corrective Action Objective 1 (including a revised GWSAP)	I 30 days after EPA's approval of the AOC Characterization Report or Supplemental AOC Characterization Report, whichever is later
Final Performance Monitoring Plan for Corrective Action Objective 1	I 30 days after EPA comments on Draft Performance Monitoring Plan for Corrective Action Objective 1
Revised Site Management Plan <sup>4</sup>	I 30 days after EPA approval of Final AOC Characterization Report or Final Supplemental AOC Characterization Report, whichever is later
WBench-scale Treatability Testing Work Plan	I 45 days after the effective date of this Amendment No. 2
Bench-scale Treatability Testing Report	I 150 days after EPA approval of the Bench-scale Treatability Study Work Plan
Pilot-scale Treatability Testing Work Plan, if necessary	I 60 days after EPA approval of Bench-scale Testing Report <sup>5</sup>
Pilot-scale Treatability Testing Report	I 360 days after EPA approval of the Pilot-scale Treatability Testing Work Plan

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<sup>3</sup> The Parties agree that future events and/or work may justify a schedule change.

<sup>4</sup> The Site Management Plan will be revised to incorporate differing site conditions that are identified in the AOC Characterization Report, as required by the EPA.

<sup>5</sup> The Parties agree that future events and/or work may justify a schedule change.

**TASK XII: Corrective Measures Implementation**

Draft Corrective Measures Implementation (CMI) Report (Including draft Performance Monitoring Plan for Corrective Action Objectives 2, 3, and 4) I 180 days after EPA approval of Pilot-scale Treatability Testing Report

Final Corrective Measures Implementation (CMI) Report (Including final Performance Monitoring Plan for Corrective Action Objectives 2, 3, and 4) I 30 days after EPA comments on the Draft CMI Report

**TASK XIII: Corrective Measures Performance Review**

Draft Corrective Measures Contingency Plans I Concurrent with submittal of Final CMI Report

Final Corrective Measures Contingency Plans I 30 days after EPA comments on the Draft Corrective Measures Contingency Plans

**TASK XIV: Reporting**

Progress Reports for Tasks XI through XIII I Every two months

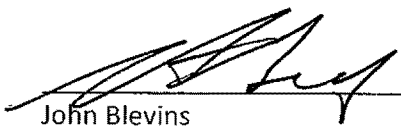
Annual Groundwater Monitoring Reports I As per approved revised GWSAP

**IT IS SO AGREED AND ORDERED:**

6/11/12  
\_\_\_\_\_  
DATED

BY:   
\_\_\_\_\_  
Formosa Plastics Corporation, Texas

6-12-12  
\_\_\_\_\_  
DATED

BY:   
\_\_\_\_\_  
John Blevins  
Director  
Compliance Assurance and  
Enforcement Division





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2735

April 24, 2009

Mr. R.P. Smith  
Vice President/General Manager  
Formosa Plastics Corporation, Texas  
P.O. Box 700  
Point Comfort, Texas 77978

RE: Approval of the Treatability Study Schedule and clarification on final corrective action report submittals for Administrative Order on Consent (AOC)  
Docket #VI-001(h)-90-H

Dear Mr. Smith,

On July 6, 2007 EPA sent a letter to your facility which formally outlined the reports needed as part of the phased draft Corrective Measures Study (CMS). The first phase was the investigation report from the former Brookings property to determine if the groundwater plume in Zone A extended to this area. Phase 1 was approved on November 16, 2007. The final Current Conditions Technical Memorandum (CCTM phase 2) was submitted on August 1, 2008 and formally approved on September 9, 2008.

The EPA is in receipt of the draft schedule for the final phase of the CMS (the Treatability Study) and formally approves the schedule with this letter. At this point in time, EPA would like to request that FPC submit a Risk Management Plan (according to the Region 6 Corrective Action Strategy) in lieu of the final CMS report. The Risk Management Plan will present the conceptual site model and the agreed upon Corrective Action Objectives and will suffice for remedy selection based upon performance standards. FPC will have 120 days to submit the RMP, per the date of this letter, April 24, 2009.

If you have any questions or concerns, please feel free to contact me at 214.665.8385.

Nancy Fugar

Project Coordinator

cc: Ms. Susan Clewis  
TCEQ Region 14

Ms. Lalitha Asirvadam  
TCEQ Austin

A copy of this letter is being placed in the administrative file for this case and is being placed in the public file for this case.  
Internet Address (URL): • <http://www.epa.gov>